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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 249.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

BENNETT B. SCHNEIDER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 25, 1886.

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Transcript from State court	4	2
Summons	4	2
Notice of appearance and demand	6	2
Petition to remove	8	3
Certiorari	10	3
Complaint	12	4
Notice as to bill of particulars	16	5
Bill of particulars	17	5
Answer	19	6
Trial, verdict, and order for certificate of probable cause	21	7
Judgment	23	8
Bill of exceptions	25	8
Testimony of Bennett B. Schneider	26	8
Plaintiff's Exhibit No. 1, protest	26	8
Appeal	28	10
Letter from Treasury Department to Schneider, July 28, 1882	29	10
Testimony of Bennett B. Schneider	31	11
Summons	54	24
Certiorari	55	24
Defendant's motions	56	24
Charge to the jury	58	25
Defendant's requests	65	28
Assignment of errors	68	29
Citation	70	30
Joinder in error	72	30

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Bennett B. Schneider, plaintiff, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson, as by his complaint appear; we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and eighty-six, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 16 day of October, in the year of our Lord one thousand eight hundred and eighty-six.

TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 (Indorsed:) 8172. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Bennett B. Schneider, defendant in error. Writ of error. Stephen A. Walker, attorney for pl'ff in error.

Due service of a copy of the within writ of error is hereby admitted this 18 day of October, 1886.

TREMAIN & TYLER,
Attorneys for Def't in Error.

(Stamped:) U. S. circuit court, Oct. 18, 1886. Timothy Griffith,

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second
3 circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to seventy-one, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against Bennett B. Schneider, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New

York, in the second circuit, this twenty-third day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

4 The superior court of the city of New York.

BENNETT B. SCHNEIDER, PLAINTIFF,
agst.
WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York, defendant. } Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated September 28th, 1882.

MASON W. TYLER,
Plaintiff's Attorney.

5 Post-office and office address, No. 167 Broadway, New York City, New York.

(Endorsed:) U. S. circuit court, S. D., N. Y. Pl'ff Exhibit 9. James H. Fish, stenographer.

6 N. Y. superior court.

BENNETT B. SCHNEIDER
v.
WILLIAM H. ROBERTSON. } Notice of appearance and demand.

You will please take notice that I am retained by and appear as attorney for the defendant in this action, and demand service of a bill of particulars of the plaintiff's claim herein and a copy of the complaint and all papers in this action upon me, at my office in the United States court and post-office building in the city of New York.

Y'rs,

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

NEW YORK, *Oct.* 4, 1882.
To MASON W. TYLER,
Attorney for Plaintiff.

7 (Endorsed:) N. Y. superior court. Bennet B. Schneider *v.* William H. Robertson. Notice of appearance. Stewart L. Woodford, United States attorney, attorney for defendant. To Mason W. Tyler, plaintiff's attorney.

8 Circuit court of the United States of America for the southern district of New York, in the second circuit.

To the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit:

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

William H. Robertson, petitioner and affiant, respectfully showeth that he was, prior to the commencement of the suit hereinafter referred to, collector of the customs for the port and district of the city of New York, duly appointed according to law, and that on or about the 29th day of September, 1882, a suit was commenced against him by Bennett B. Schneider, in the superior court of the city of New York, for or on account of acts done by him under the revenue laws of the United States, and as such collector, and that he has been served with process in said suit in said southern district, and that no trial has been had in said cause.

He therefore prays that, in pursuance of the act of Congress in such case made and provided, the said cause so commenced in the said superior court may be removed therefrom and entered on the docket of this honorable court, and thereafter proceeded in as a cause originally commenced in this court.

And he will ever pray, etc.

And, being duly sworn, deposes and says that the matters hereinbefore set forth are true to the best of his knowledge, information, and belief.

W. H. ROBERTSON.

Sworn to before me this 9th day of October, A. D. 1882.

GEO. HILLIER,
Notary Public, County N. Y.

I certify that, as counsel for the petitioner, I have examined into the proceedings against him, and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, October 10, 1882.

S. L. WOODFORD,
U. S. Attorney, Counsellor of the said Circuit Court.

9 (Indorsed:) 8172. U. S. circuit court. Bennett B. Schneider vs. William H. Robertson, collector of customs at the port of New York. Petition to remove cause. Stewart L. Woodford, United States attorney, attorney for defendant. U. S. circuit court; filed Oct. 11, 1882. Joseph M. Deuel, clerk.

10 The President of the United States of America.

To the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against

W. H. Robertson, defendant, by Bennett B. Schneider, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 16th day of October, 1882, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief-Justice of the Supreme Court of the United States, the 11th day of October, in the year one thousand eight hundred and eighty-two.

[L. S.] JOSEPH M. DEUEL,
Clerk.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

11 I have this day personally served upon the clerk of the superior court of the city of New York a duplicate of the within writ, at the same time showing the original.

HENRY E. KNOX,
U. S. Marshal.

Dated Oct. 12, 1882.

(Indorsed:) 8172. U. S. circuit court. Bennett B. Schneider versus W. H. Robertson. Certiorari. William Dorsheimer, United States attorney, attorney for defendant. U. S. circuit court; filed Nov. 1, 1882. Joseph M. Deuel, clerk.

12 United States circuit court, southern district of New York.

BENNETT B. SCHNEIDER *against* WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York.	8172.

The above-named plaintiff for complaint in this action states:

1st. That the defendant during the times hereinafter mentioned was collector of the customs of the United States at the port of New York.

2nd. That the plaintiff during said time was doing business as a merchant in New York City, and in his said business imported and entered at the port of New York certain merchandise at the time and by the vessel specified in the plaintiff's bill of particulars hereby served in this action.

13 3d. That the defendant, as such collector, exacted from plaintiff, as and for duties on said merchandise, the sum specified in said bill of particulars, in all the sum of seventeen $\frac{07}{100}$ ($17.07) dollars, in excess of the amount required by law, which said sum, amounting in all to about the sum of seventeen $\frac{7}{100}$ ($17.07) dollars, plaintiff, on or about the dates specified in said bill of particulars, and in order to obtain possession of said goods, were compelled to pay, and did pay to the defendant.

4th. That plaintiff filed with said defendant due and timely protests in writing, upon each and every entry of said goods, against his decision

exacting such duty, setting forth distinctly and specifically the
14 grounds of objection thereto, and also as above stated.

5th. That plaintiffs made due and timely appeal in each case to the Secretary of the Treasury, who affirmed the decision of the defendant.

6th. That the said bill of particulars herewith served herein and which plaintiff makes a part of this complaint states the date of the entry at the custom-house; the precise amount of duty said to have been exacted in excess; the date of payment of said duties, of the filing of said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law.

7th. That the sum so exacted as aforesaid have never been repaid to the plaintiff, and are still due and owing to him.

15 Wherefore plaintiff demands judgment against the defendant for the sum of seventeen $\frac{7}{100}$ ($17.07) dollars with interest on said sum from the date of payment thereof, as it appears in said bill of particulars, together with the costs and disbursements of this action.

MASON W. TYLER,
Attorney for Plaintiff.

Office and post-office address, 167 Broadway, New York.

(Endorsed:) U. S. circuit court, southern district of New York. Bennett B. Schneider against William H. Robertson, collector, &c. Complaint. M. W. Tyler, pl'ff's att'y, 167 Broadway, N. Y.

Due and timely service of a copy of the within is hereby admitted. Dated New York, Oct. 26, 1882. S. L. Woodford, U. S. attorney, att'y for d'f't.

16 U. S. circuit court, southern district of New York.

BENNETT B. SCHNEIDER *agst.* WILLIAM H. ROBERTSON, COLLECTOR, &C. } 8172.

SIR: Please take notice that the within is a bill of particulars of the plaintiff's demand in the above entitled action.

Dated New York, October 1, 1882.

Yours, &c.,

MASON W. TYLER,
Plaintiff's Attorney, 167 Broadway, New York.

To STEWART L. WOODFORD, Esq.,
U. S. Dist. Attorney, for Defendant,
Post-Office Building, New York City.

17 *Bill of particulars.*

Name of importer.	Description of merchandise.	Place whence imported.	Name of vessel.	Entry at custom-house.
Bennett B. Schneider	Chimnies	Hamburg.....	Western Chief ...	Ap'l 11, 1882.

Name of importer.	Payment of duties.	Filing protest.	Appeal to Secretary of Treasury.	Decision of appeal.	Amount of excess claimed.
Bennett B. Schneider.....	Ap'l 11, 1882.	Ap'l 15, 1882.	Ap'l 15, 1882.	July 28, 1882.	$17.07

18 (Endorsed:) U. S. circuit court southern district of New York. Bennett B. Schneider ag't William H. Robertson, collector, &c. Bill of particulars. M. W. Tyler, pl'ff's att'y, 167 Broadway, New York.

Due and timely service of a copy of the within is hereby admitted. Dated New York, Oct. 26, 1882. S. L. Woodford, U. S. attorney, att'y for def't.

19 United States circuit court, southern district of New York.

BENNETT B. SCHNEIDER)
versus
W. H. ROBERTSON, COLLECTOR, ETC.)

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned, were paid by said plaintiffs as a debt due by him to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter, and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys, so received from plaintiffs, were the amounts due from him to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by him imported, and assessed with the duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiff's import entry thereof were collected or received by defendant from the plaintiffs.

III. And defendant further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States at the rates specified in the complaint.

IV. And defendant farther answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs, conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as he may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and

each thereof, and leaves the plaintiffs to make such proof thereof as he may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

20 SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York. }

W. H. Robertson, being duly sworn, says that he is the defendant above named, and that the foregoing answer is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this day of , 188 .

Notary Public, New York County.

(Indorsed:) 8172. U. S. circuit court, southern district of New York. Bennett B. Schneider vs. W. H. Robertson, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, , 188 . , plaintiff's attorney. To , plaintiff's attorney.

21 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the fifth day of December, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Alfred C. Coxe, sitting as circuit judge.

BENNETT B. SCHNEIDER }
v.
WILLIAM H. ROBERTSON. }

Now comes the plaintiff, by Tremain & Tyler, his attorneys, and moves the trial of this cause. Likewise comes the defendant by Sam'l B. Clarke, ex ass't U. S. att'y, his attorney; thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, on Tuesday, December 9th, 1884, the jury retire, and on their return render a verdict, whereby they find for the plaintiff in the amount of eighteen dollars ($18.00).

It is ordered that a certificate of probable cause be entered herein,
22 and that defendant have a stay of proceedings on said verdict for thirty days from Dec. 9th, 1884.

A copy.

TIMOTHY GRIFFITH,
Clerk.

23 U. S. circuit court, southern district of New York.

BENNETT B. SCHNEIDER
ag'st
WILLIAM H. ROBERTSON,
collector of the port of New York. } 8172. Judgment.

The issues joined in this cause having come on for trial at the October term of this court, 1884, before Mr. Justice Coxe and a jury duly impaneled and sworn, and a verdict having been rendered for the plaintiff for the sum of eighteen dollars (818): Now, on motion of Tremain & Tyler, plaintiff's attorneys,

It is adjudged that the plaintiff, Bennett B. Schneider, do recover of the defendant, William H. Robertson, the sum of eighteen dollars (818) as aforesaid, together with the sum of one dollar and ninety-eight
24 cents interest and forty-six $\frac{85}{100}$ dollars costs, amounting in the aggregate to sixty-six $\frac{83}{100}$ dollars, for which sum judgment is hereby docketed.

Judgment signed this 7th day of October, 1886.

JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed:) U. S. circuit court, southern district of New York. Bennett B. Schneider ag'st William H. Robertson, collector of the port of New York. Judgment roll. Tremain & Tyler, att'ys for pl'ff, 167 Broadway, N. Y. City. U. S. circuit court. Filed Oct. 7, 1886. Timothy Griffith, clerk.

25 Circuit court of the United States for the southern district of New York.

BENNETT B. SCHNEIDER, PLAINTIFF,
v. } 8172.
WILLIAM H. ROBERTSON, DEFENDANT.

Bill of Exceptions.

And afterwards, to wit, on the 5th, 8th, and 9th days of December, 1884, this case came on to be tried before the Hon. Alfred C. Coxe, district judge for the northern district of New York, duly assigned to hold this court, and a jury duly empaneled and sworn to try the issues herein.

The parties appeared by their counsel, H. E. Tremain, esq., for the plaintiff, Samuel B. Clarke and L. Karge for the defendant.

And upon the trial of the said issues the counsel for the said plaintiff to maintain and prove the said issues on his part gave evidence tending to show that about the 11th day of the month of April, 1882, he had imported and made entry at the port of New York certain goods, wares, and merchandise described in the invoice in the German language as glass chimneys, and that the defendant, as collector of the said port
26 of New York, levied duties upon said goods, wares, and merchandise at the rate of 40 per centum ad valorem under the provisions

for "all articles of glass, cut," &c., in section 2504 of the Revised Statutes of the United States.

Plaintiff then called Bennett B. Schneider, who, being sworn, testified that he was the plaintiff in the cause; that he imported into the port of New York, by the vessel *Western Chief*, on or about the 11th day of April, 1882, certain glass chimneys, samples of which he produced, and the same were marked in evidence as Exhibits 3 and 4; and that plaintiff was charged, and on or about April 11th, 1882, paid duties thereon to the defendant on said day at the rate of forty per cent. ad valorem, no part of which has been repaid to plaintiff.

The counsel for the plaintiff, further to maintain and prove the said issues, produced and offered in evidence a protest in the following words:

"U. S. circuit court, S. D. N. Y. Plff. Exhibit No. 1. James H. Fish, stenographer.

"To Collector of Customs, New York:

"SIR: We hereby protest against your ascertainment, collection, and liquidation of and demand for duties at the rate of forty per cent. ad valorem on the merchandise therein mentioned and embraced in our entries as follows:

Invoice.	Marked.	Steamer.	Rate of duty paid.	Date of duty paid.
From Hamburg	A	Western Chief ...	Forty per cent ...	April 11, 1882.
	B	" "	" " "	" " "

27 and also other marks and numbers as this protest is intended to apply to all similar merchandise embraced in the said importations, claiming that the proper and lawful rate of duty on said goods is thirty-five per centum ad valorem under schedule , section 25, U. S. Revised Statutes, because they are articles of plain glass.

"Your ascertainment, liquidation and exactions as aforesaid, are submitted under compulsion and in order to get our goods; and we claim a refund accordingly. You are hereby notified that this protest is intended to apply to all future similar importations, and that the duplicate protest which is herewith submitted for transmission by you to the Secretary of the Treasury is intended to be an appeal to him from your decision on the foregoing and on all such future entries as fully as if formally made on each entry thereof; and this protest is expressly hereby made to apply to all similar future exactions. In the event that you shall not yet have made your final decision on any of our said entries or respecting said exactions, you are hereby notified to read this protest then in your office, upon rendering said decision, of which you are hereby requested to notify us.

"Respectfully,

"B. B. SCHNEIDER,
"By M. W. T."

"(Endorsed:) 1717. B. B. Schneider. Western Chief. Glass. (Custom-house, New York, received Apr. 15, 1882.) To the collector of customs. U. S. circuit court, S. D. N. Y. Plff. Exhibit No. 1. James H. Fish, stenographer."

28 Counsel for defendant objected to the reception in evidence of said protest upon the ground that it was not competent until the liquidation was proved, to see whether it was in time or not.

The court thereupon overruled the objection and admitted the said protest in evidence, to which ruling of the court the defendant by his counsel then and there duly excepted.

The plaintiff then offered in evidence an appeal, endorsed upon the back of the protest, in the following words:

"We hereby appeal to the Secretary of the Treasury from the decision of the collector of customs protested against for the reason stated in our foregoing protest. New York, April 15, 1882. Yours, &c., B. B. Schneider, by M. W. Tyler, att'y, 167 B'way, N. Y."

Counsel for defendant objected to the reception in evidence of said appeal upon the ground that it was not an appeal to the Secretary; it is neither the document itself nor a certified copy; that it can not be both protest and appeal; and that it is not competent evidence.

The court thereupon overruled the objections and admitted said appeal in evidence; to which ruling of the court the defendant by his
29 counsel then and there duly excepted.

The plaintiff then offered in evidence a letter dated July 28, 1882, addressed to Mr. B. B. Schneider, in the following words:

"H. B. J. Rec'd July 29, '82. 1552 H. & C.

"TREASURY DEPARTMENT,
"OFFICE OF THE SECRETARY,
"*Washington, D. C., July* 28, 1882.

"Mr. B. B. SCHNEIDER,
"*Per M. W. Tyler, attorney,* 167 *Broadway, New York:*

"SIR: This Department is in receipt of your appeal (No. 1716H) dated April 15, 1882, from decision of the collector of the port of New York, assessing duty on certain merchandise imported per Western Chief, Ap'l 11, 1882.

"In reply, you are informed that the case has been disposed of by instructions this day addressed to the collector of customs at the port mentioned, to whom you are referred for particulars.

"Respectfully,

"A. WEBSTER, *Chief Clerk.*

"1 Ed. 9-11, '79-5, 0007.

"(Endorsed:) Matter Schneider. Secretary letter dated July 25, 1882. Importation per Western Chief, April 11, '82, 8172. E. N. 50."

30 Counsel for defendant objected to the reception in evidence of said letter upon the ground that it was immaterial and incompetent.

The court thereupon overruled the objection and admitted the said letter in evidence, to which ruling of the court the defendant by his counsel then and there duly excepted.

The plaintiffs then called various witnesses, importers and dealers in glassware, who testified that articles of glass of the kind represented by the samples, Exhibits 3 and 4, are made two together in a mold; after coming from the mold they are separated in different ways—by a diamond or by hitting; that after they are separated the ends are put on a revolving iron wheel, with water and sand on it, by unskilled laborers, and the sharp edges ground off; that they are then ready for market; that they are articles of plain glass, and that such articles are not articles of cut glass.

The process of grinding off was described in more or less detail by various witnesses on both sides and testimony was adduced by plaintiff tending to show that no glass is cut until it has been first placed upon an iron wheel with sand and water, which the witnesses denominate as grinding. Next upon a stone wheel, with water alone, which they denominate cutting. And third, upon a cork or wooden wheel, with pumice-stone, which they call polishing.

Plaintiff contended that when the glass has been ground, cut,
31 and polished, it becomes cut glass; that no glass is cut until it has been subjected to each and all of these processes.

Plaintiff also produced some evidence tending to show that cutting is the art of applying a design to the article to increase its value or enhance its beauty. There are different classes of glass articles designated in commercial communities. The term cut glass is a well-known term in the trade. Plain glass is the term which expresses the opposite of cut glass. That the imported articles did not belong to the class known in trade as cut glass; that they were not produced by skilled labor.

While the witness Schneider was upon the stand, and during his examination-in-chief, he was asked among other questions the following, and answered as follows:

Q. How long have you been familiar with commercial usage touching dealings in glassware?

A. Between 38 and 39 years.

Q. Do you know the meaning in trade and commerce of the term "cut glass?"

A. I think I do.

Q. Is there a well-defined term in trade and commerce by which a class of articles is commercially designated under the term "cut glass?"

A. There is.

Q. When you see an article are you able to tell at once whether it comes within the designation for commercial purposes of that term, "cut glass?"

A. I am able.

Q. Do these articles, such as you have produced, "Exhibits 3
32 and 4" (being samples of the importations in question), come or not within that designation?

A. They do not.

(To this last question counsel objected as irrelevant and immaterial; the court overruled the objection and defendant's counsel excepted.)

On being cross-examined by assistant U. S. att'y for the defendant, the witness testified as follows:

Q. Are you familiar with the manufacture of these articles?

A. I am.

Q. Have you seen them manufactured?

A. I have.

Q. By what process do the ends of the chimney here (Exhibit 3) get into the condition in which they are?

A. I presume those got into the condition by placing them on the edge of a large iron wheel with water or sand on it. But they may not be——

Q. Never mind. The question is, by what process did they?

A. I don't know; I was not by when these were made.

Q. Your judgment is that they were made that way?

A. They are made that way; they are made in other ways; they can be filed off with a file, but it is more laborious.

Q. Practically and usually they are made in the way you stated?

A. They are usually made in that way now, because it is cheaper.

Q. Describe it a little more fully?

A. After they are separated—the bottom pieces separated—it
33 comes out of the glass-blower's hands, you know, in the shape of a bottle; one end is closed up.

Q. (Showing another sample). Like that?

A. Somewhat in the shape of that. Of course that is a different shape from this; but in that order.

The specimen just shown is marked defendant's Exhibit A.

Q. When they come from the mold is there more than one; are they joined together, three or four of them?

A. That depends on the size of them.

Q. Such as the size of number 3?

A. They are made two together.

Q. And they are broken apart?

A. Broken apart.

Q. So that they are separated? A. But they are a different method from this. There is only one of that kind. Exhibit A is made in this country and Exhibit 3 is made in Europe.

Q. On Exhibit A there is a fracture there. What is that?

A. That is where it is broken off.

Q. Broke off from the blower's stick? A. No; in this country they pursue a different course of manufacture than they do in Europe.

Q. I ask you in Europe?

A. When they first blew this the stick was on here; and then they commenced work on it right here; and then they opened this end and finished it by the heat.

Q. In a case like Exhibit 3, where you say two of them come together, when they are taken from the mold they are attached together, are they not, by a lip?

34 A. No; they are just like that; closed together.

Q. Is there any bulb?

A. No, sir.

Q. Is there any swell of any kind?

A. No, sir.

Q. How are they separated?

A. By a fracture, or by half a dozen different ways; by a diamond or by hitting.

Q. In what condition; like Exhibit 3, as they come from the mold?

A. The shape of a long bottle.

Q. Can you explain a little more definitely?

A. Imagine that this part here is closed up, and that is the shape they come out; but they are in one piece, and this end is closed up and the other end open.

Q. Is it open all the way through from one end to the other?

A. All the way through down to the bottom, and this other end closed up.

Q. How are they separated at the middle, so as to make the base of the chimney?

A. Different ways.

Q. Usually?

A. By fracture; by a blow.

Q. How do they provide so the blow shall make an even fracture all around?

A. They may have a little bit of an indentation, so that they know the exact place where they are to be separated, in the iron mold.

Q. Is not the glass blown thinner at that point, as a rule?

A. No, sir; not in these particular cases, like 3 and 4.

Q. What I want to know is how they provide for making accurate fracture, so that it will be an even end.

35 A. They have a little indentation in the mold and that produces the same thing in the glass.

Q. It makes a little dent; makes the glass thinner at that point, don't it?

A. Perhaps a fraction thinner—a trifle.

Q. And it is along the line of that indentation that the fracture is made?

A. Yes; they are separated there.

Q. And then what is done with it after it is separated in that way like Exhibits 3 and 4?

A. Then it is put on the iron wheel.

Q. In what condition are the articles first after they are separated, and before they are put on the iron wheel, with respect to the fractures?

A. They are about the same as they are now, only the edges are a little sharper and liable to cut your hands in handling.

Q. That is, their projections?

A. Inequalities; little small particles are perceptible; in handling they would cut your hand.

Q. In what condition is the top of the chimney?

Q. The one that the pipe is to has a bulb of glass, which is separated in the same manner as the other.

Q. So that the top and the bottom of the chimney are applied to the wheel?

A. Yes, sir; both top and bottom.

Q. And that was the case with these importations?

A. Yes, sir.

36 Q. What sort of a wheel are they applied to?
A. An iron wheel.
Q. How arranged?
A. A large flat wheel.
Q. Made to revolve in some way?
A. Made to revolve with power.
Q. Any sort of power?
A. Yes, sir; and three or four or half a dozen small girls or old women or small boys stand around and hold them on the wheel. They have three or four in their hand at one time in that manner, and they stand like that, and chat and talk all the while and never look at the work hardly.
Q. Is there any sand or anything of that kind put on the wheel?
A. Sand and water.
Q. On the wheel?
A. On the wheel.
Q. And is there anything further done with the chimney to complete it after that?
A. Nothing more.
Q. They are packed up and sent over after that is done in that fashion?
A. Yes, sir.
Q. Will you name to me an article of cut glass?
A. Yes, sir; this is an article of cut glass.
(The bottle and stopper produced by the witness are marked Defendant's Exhibit B.)
Q. What parts of Exhibit B are cut glass and what parts are not cut glass, if any?
Mr. TREMAIN. I object to that, as assuming that part of it is cut glass, when the witness has testified that this is an article of cut glass.
(Objection overruled.)
37 Answer. Every part of this article is cut glass except this little small rim underneath the lip. Every other part is cut glass.
Q. The bottom?
A. Yes, sir.
Q. The stopper?
A. Yes, sir; and the top edge there too.
Q. Do you know how these were made?
A. Yes, sir.
Q. Let us take the stopper; tell me how the bottom of the stopper is cut.
A. That is put on a stone wheel by a practiced workman and polished afterwards; it goes through several hands.
Q. What sort of a stone wheel?
A. A small stone wheel.
Q. That revolves, does it?
A. Yes, sir.
Q. Is there anything else on the wheel, such as sand or anything of that sort?
Q. Sand and water.
Q. In what condition is it after it comes off of that wheel?
A. Then it is in the rough condition.
Q. There are no sharp edges on it?

A. No, not sharp.

Q. What do you mean by rough?

A. In rough condition to what it is now.

Q. It is not so smooth as it is now?

A. It goes through another process.

Q. Then what is done after it comes off of that wheel where it is ground with sand and water?

A. It is polished.

Q. How is it polished?

A. Polished with a wooden wheel.

38 Q. How is the wooden wheel arranged?

A. Revolves.

Q. Is there sand on that?

A. No, sir.

Q. What is on that?

A. I don't know as they put anything on it.

Q. Just a revolving wooden wheel, against which they press the pieces of glass?

A. Yes, sir.

Q. Is that all that is done to it to make it?

A. That is all that is done to it.

Q. You don't understand that that wooden wheel cuts it at all?

A. No; it polishes it; takes off the rough surface.

Q. So that that becomes cut glass by being put on this stone wheel and exposed to the action of the revolving stone wheel with sand and water and then being put onto a wooden wheel to polish it?

A. I think after they do the rough work they put it on another wheel without any sand; just with water.

Q. What other wheel?

A. A stone wheel.

Q. Another stone wheel?

A. Yes, sir; another stone wheel.

Q. You have a stone wheel first which revolves and on which there is sand and water, and then again a wheel with water and then take it off, and you think there is another stone wheel?

A. I think there is another stone wheel without any sand; just with water.

Q. And they put it on that?

A. Put it on that.

Q. Then after that they put it on the wooden wheel?

39 A. Yes, sir; and polish it.

Q. So that there are three processes?

A. Three in fine cut glass.

Q. So that there are two stone wheels and one wooden wheel; the first stone wheel is used with sand and the second stone wheel with water. Is that it?

A. The first is used with sand and water.

Q. The first is a sand-and-water wheel; and the second one is a wheel with water only; and the third, a wooden wheel without any water or sand?

A. They may use something else for polishing, but I don't know of anything; I am not certain about the polishing.

Q. You don't know about the polishing?

A. About the polishing process I don't know whether they use anything like rouge, or something like that or not, or whether they use the plain wooden wheel.

Q. That you are not familiar with?

A. Not familiar with that.

Q. When do you understand it becomes cut in that process?

A. When it goes through all these different processes.

Q. Do you mean to be understood that it has not become cut until after it has gone onto the wooden wheel?

A. I don't say that. It depends altogether what kind of cutting you want.

Q. I mean such as the bottom of that stopper?

A. That is not finished unless it goes to the wooden wheel.

40 Q. The bottom of that stopper?

A. Yes, sir; it is not finished until it goes on the wooden wheel.

Q. I ask you now if going on wooden wheel does any cutting to it at all?

A. It smooths the surface; it is a part of the cutting.

Q. Your business is that of dealer in these articles?

A. Yes, sir.

Q. You are not a manufacturer of the articles?

A. No, sir.

Q. Your information as to the manufacture is derived by visiting the manufactories, I suppose, and seeing it done in various cases?

A. Yes, sir.

Q. You have produced samples of all the goods on your invoice?

A. The others are colored glass; shades.

Q. Will you please read the case numbers?

Answer. D in a diamond, H outside, 183 cases of hollow glass; it should be colored glass. The same mark, 122 cases of the same goods. Those are colored glass shades.

Q. The only importations of chimneys on the invoices of which these goods are samples are which lines?

A. They are the A. and B. in a diamond.

Q. And then A. next, 165; and B. in a diamond one to fourteen; that is all, is it?

A. That is all; yes, sir.

Redirect examination by plaintiff's counsel:

Q. Now, referring to Exhibit 3 and 4, did we understand you

41 to say that they were made in moulds, one at a time or two at a time?

A. Two at a time.

Q. Referring to Exhibit A; are chimneys of that kind made in molds of one or two or more at a time?

A. That is not made in a mold at all.

Q. I understand you to say that they make these chimneys different in Europe than here?

A. They do, sir; they make some different.

Q. Will you describe the difference in process of manufacture between the sample Exhibit A and the samples 3 and 4?

A. Sample A is not made with a mold at all.

Q. And samples 3 and 4 are?

A. Yes, sir.

Q. Describe what differences, if any; and I call your attention to the tops of the chimneys.

A. They make a great many chimneys here without molds, and finish them off by hand like the top of this chimney A.

Q. Describe how that is finished off at the top.

A. After they take the stick or "punta," as they call it, off the small end, they separate it and stick it on this end and then hold the small end in the furnace, and they take tools which keeps that open and makes it according to the size they require.

Q. And that makes a smooth edge?

A. That makes a smooth edge.

Q. Does that process make the article come within the commercial designation of a cut glass article?

A. No, sir.

42 Q. Commercially speaking, what is the process that places an article within that category?

(To this question defendant's counsel objected as follows:)

DEFENDANT'S COUNSEL. I object to the question, on the ground that the question of cut glass is a question of commercial usage. Now, the question of usage depends upon what in effect dealers do call cut glass, or what people in the trade do call cut glass. The process by which it gets to be that has no bearing upon what is cut glass and what is glass cut, which is the issue here.

PLAINTIFF'S COUNSEL. On that proposition I am not at issue with my friend. I would not have asked this question except he asked a few questions on the cross-examination which indicated that he did not agree with me. I now claim the right to cross-examine upon the matter which he brought out. Objection overruled.

(Defendant excepts.)

Answer. The increased value placed on it in the art of cutting glass.

Q. Is that a product of skilled labor?

A. Yes, sir.

Q. Is there any skilled labor employed upon the chimneys which you imported in this case?

A. No, sir.

Q. At what period in the process of manufacturing articles of cut-glass ware is skilled labor employed?

A. In all the parts.

43 Q. As for instance Exhibit B, which I now show you; are all the substantial parts of that article the product of skilled labor?

A. Every part of it.

Q. Ground glass isn't cut glass, is it?

A. No, sir.

Q. Blown glass is not cut glass, is it?

A. No, sir.

Q. Pressed glass is not cut glass, is it?

A. No, sir.

Q. Mold glass is not cut glass, is it?

A. No, sir.

Q. Are there plain chimneys that have been subjected to such process as these chimneys Exhibits 3 and 4 have been subjected to that are any smoother on the edges than these are?

A. Yes, sir.

Q. You have seen such chimneys, have you?

A. Yes, sir.

Q. What further process have such chimneys been subjected to, if any?

A. By heating them in the furnace after they are ground off—after they are in this condition; then they become plain chimneys according to the interpretation of the custom-house.

Q. Is this that I now show you such a chimney?

A. Yes, sir; that is one.

(The specimen is marked Plaintiff's Exhibit No. 5.)

Q. What difference is there between that marked Exhibit No. 5 and Exhibits 3 and 4?

A. It is the same chimney, only it has had additional labor put upon it.

Q. Is that skilled labor?

A. No, sir.

Q. That is the additional labor that you have just described?

A. Yes, sir.

By the COURT. How do these wheels revolve?

44 A. Just the same as a mill-wheel; it is a flat wrought-iron wheel, and it is sometimes eight or ten feet in diameter.

By PLAINTIFF'S COUNSEL. What qualifications, if any, do these boys and girls who hold these chimneys, several of them, in their hands at a time, possess for that particular work; can anybody do it?

A. Any one can do it; they don't require any qualification except to hold them on the wheel.

Q. That is, the iron wheel?

A. The large iron wheel like a mill wheel.

Q. Now, the skilled labor is generally applied with a stone wheel and a wooden wheel, is it not?

A. Yes, sir.

Q. And for the purposes of ornamentation?

A. For the purposes of ornamentation and cutting of glass.

Q. Glass that is roughed off is not cut glassware, is it?

A. No, sir.

Q. You have described three or four different wheels—two stone wheels, an iron wheel, and a wooden wheel; there are more than that in the manufacture of cut-glass articles, are there not.

A. I don't know as they go through any more processes than those three processes that I have mentioned; they have different sizes of wheels.

Q. That is what I referred to; wheels revolving in different methods, producing different effects?

A. Yes; revolving the other way.

Q. Revolving vertically?

45 A. Revolving vertically and not horizontally.

Q. Those wheels, when used in the manufacture of cut glassware, are manipulated by skilled hands, are they not?

A. Yes, sir.

Q. I show you another sample and ask you whether or not this sample is an article of cut glassware or not?

A. This is called an article of cut glass.

(The specimen is marked Plaintiff's Exhibit No. 6.)

Q. And it is so generally recognized in commerce?

A. Yes, sir.

Q. Has skilled labor been applied to any considerable extent to that article?

A. To every part of it; to every part that is cut.

Q. To part of it?

A. To every part that is cut.

Q. In what respect is there a similitude between that article and your samples 3 and 4?

A. No similitude.

Recross by DEFENDANT'S COUNSEL:

Q. In Exhibit No. 6 you say that all the parts that are cut have had skilled labor applied to them; are there any parts that have not been cut in that exhibit?

A. Yes, sir.

Q. Specify.

A. The outer rim of the stopper around the bottom has not been cut; the upper part of the foot has not been cut; the middle indentation in the shank has not been cut; and just under the bowl there is a little,

46 small space has not been cut; the little spots around the lower part of the body have not been cut; and the inside has not been cut.

By PLAINTIFF'S COUNSEL:

Q. That has been finished, has it not, wherever it is cut?

A. Yes, sir.

By the COURT:

Q. An article may be cut glass, then, and not all parts of it subjected to the cutting process?

A. Yes, sir.

Q. How large a proportion of it should be subjected to the cutting process in order to make it commercially designated as cut glass?

A. That depends on the taste of the fashions of people.

Q. Take the bottle that you have produced here and assume that there was no part of it cut except the bottom, would it then be known as cut glass?

A. No, sir.

Q. Where do you draw the line between cut glass and pressed glass; for instance, would that be pressed [referring to a part of number 6]?

A. It would be blown; a plain blown bottle.

Q. Take a blown bottle and subject it to the cutting process and what would you call it?

A. I would call that part cut.

Q. But if you were speaking of the bottle?

A. It would be a blown bottle with a cut bottom.

By PLAINTIFF'S COUNSEL. It would not be known in trade and commerce by the designation of cut glass, would it?

A. No, sir; not ordinarily.

47 By DEFENDANT'S COUNSEL. What articles are known under the designation of cut glass as you understand it?

A. Articles requiring so much of skilled labor.

Q. If that bottom [referring to Exhibit 6] had been required to be cut by skilled labor, would not that be within that description?

A. It would be an article simply finished on the bottom; parts of it might not be. It has been known that blown bottles are made with a star bottom, as this is, for the purpose of reflecting through the bottom and enhancing the value of the bottle by being cut; and if you mentioned it as an article of commerce, any one who was acquainted with that would call it cut glass.

Q. Then, if I understand you, if there has been any cutting upon an article of glass, that which enhances its value, it becomes an article of cut glass within the trade meaning of an article of cut glass.

A. Yes, sir.

By the COURT:

Q. Would such an article as you have now in your hand, Exhibit B, be cut upon the wheel you have described that was used for the bottoms of these chimneys?

A. No, sir.

Q. I mean roughly?

A. No, sir; it couldn't be cut as this is [referring to No. 3].

Q. No; but could that wheel be used for the first stage of the cutting—that big iron wheel?

A. I don't know as it could; they don't do it that way.

48 By PLAINTIFF'S COUNSEL:

Q. The reason that that would not be cut glass would be what, in respect to the finishing?

A. I don't quite get that question.

Q. I say, following up the judge's question, I understood you to say that Exhibit B is subjected to an entirely different process from the chimneys.

A. Yes, sir.

Q. And what I want to ask you is this, has that been subjected to a finishing process?

A. Yes, sir; Exhibit B has.

Q. And have the chimneys?

A. No, sir; not the same.

The COURT. What I asked was, could the first stage of a process of cutting be done upon the wheel that has been described—the large wheel; and he says he don't know as it could.

The WITNESS. I believe that all cut-glass articles known to the trade as cut glass are ground, and the first stage is ground on a stone wheel with sand and water.

By PLAINTIFF'S COUNSEL:

Q. And then what?

A. And then they pass from one stage to another until they are finished.

Q. What is the finish?

A. The finishing is the polishi _. Why, that piece in there, in this sample B, in the market that has a value as a cut-glass article.

49 Q. There are three processes employed there, are there not?

A. Yes, sir.

Q. For all cut-glass articles?

A. Yes, sir.

Q. Three wheels?

A. Three wheels.

Q. All manipulated by skilled labor?

A. Yes, sir.

Q. Your chimneys have been subjected to none of all these?

A. No, sir.

Q. That iron and sand and water wheel is a different kind of affair?

A. Different altogether.

By DEFENDANT'S COUNSEL:

Q. Do I understand you to mean that within the trade definition of cut glass nothing is cut glass unless it has been polished?

A. No, sir; I don't mean to say that.

Q. What did you mean to say?

A. I mean to say that this bottle, Exhibit B here, would be a finished article without being polished.

Q. Well, is there anything in the trade known as cut glass which has not gone through the polishing process; and, if so, what?

A. Different articles; a great many articles.

Q. Name them.

A. Gas globes.

Q. What is that?

A. An article to put over a gas flame; similar to those up there on that big chandelier. There is a great number of those not polished.

Q. Are those cut glass?

A. Yes; they look like cut glass from here; they are very high up on that chandelier, and I can't tell.

Q. They may be cut glass without being polished?

A. Partly. Well, they are not called cut glass then.

50 Q. But they have been cut?

(Objected to as an improper mode of examining the witness.)

Answer. There are a great many different ways of ornamenting glass. Some are cut, and some are half cut, and some are polished, and some are roughed without being polished at all; some are etched with acid and sand blast.

Q. Now, answer my question, which I again come back to; is there anything within the meaning of the phrase cut glass as used in the trade which has not gone through the final polishing process which you have described? If so, what? Do you understand it?

A. I understand. I am just trying to think of some that come within

that meaning. I think there are some articles that only go through two processes.

Q. Which two processes?

A. The first two.

Q. First the wheel with sand and water?

A. The rough wheel and sand and water and then the other wheel with water alone.

Q. Now, can you name such articles?

A. Chimneys, globes.

Q. They are known as cut glass, are they?

A. Yes, sir.

Q. Even though they have not been polished?

A. They haven't been polished.

Q. Have you got such a sample here?

A. I think there is one.

51 (The witness produces a specimen and it is marked Defendant's Exhibit C.)

Q. n Exhibit C, point out to the jury what are the parts that have been cut.

A. The central ornamentation between the bands.

Q. It is what we sometimes know as ground glass?

A. No, sir; that is cut glass.

Q. Are there any other parts of this that have been cut?

A. No, sir.

Q. How about the bottom?

A. That is plain.

Q. Has that article passed through both processes with the wheel and sand and water and the water wheel alone?

A. I think it has only passed through one.

Q. Which one?

A. The second one.

Q That is the wheel with water alone?

A. I think so.

Q. Without any sand?

A. I am not certain about that.

Q. Well, is that your impression?

A. It is my impression that this is the second wheel.

Q. Is it your impression that it has only been through one of those processes?

(Objected to on the ground that the witness has already given his best recollection. Objection overruled.)

Answer. I think it has only been through one.

Q. Now as to which one are you uncertain?

A. I think it is the second one.

52 Q. Your impression is that it is the second one?

A. Yes; there is something besides that, though. There are two bands on each end. That is done in a different arrangement; not on the same wheel. These bands are made differently; they are not made with the same.

Q. Which ones?

A. The frosted bands are made by different processes and in different ways. Not the same wheel as the ornamentation is done with.

Q. This ornamentation, you think, has been through one of the wheels?

A. I think the second wheel.

Q. That is the wheel with water alone?

A. Water alone.

Q. How are the rings made?

A. The bands are done with sand and water, in different processes.

Q. With a wheel?

A. No; I don't hardly know how it is done. It is done differently from the other, though.

Q. Do you know how it is done?

A. I do not.

Q. You understand it is done with sand and water somehow?

A. Sand and water.

By a JUROR:

Q. Without the centre ornamentation would this globe, Exhibit C, be ground glass?

A. That would be ground glass without the central ornamentation.

Q. Would it, without the central ornamentation, simply having those circular strips, constitute cut glass?

A. No, sir.

53 By DEFENDANT'S COUNSEL:

Q. It is only the central ornamentation that you say is cut?

A. Yes, sir.

Q. Yet you say as to the bands, that it is not cut glass?

A. That is not cut glass; no, sir.

Q. That is the one you say was done with sand and water?

A. Sand and water.

Q. But in some way that you don't know how?

A. I don't know exactly; it is done in a different way, though.

Q. The ornamentation, you say, has gone through but one of these processes, and as you think the second one?

A. The second one.

Q. On the wheel with water only?

A. I am sure it is not the third one.

Q. And it becomes ground glass when it goes through but one of those processes?

A. Yes, sir.

Q. Have you any other sample of an article of cut glass?

A. There is another one, but it is the same thing as Exhibit C.

Q. There are different styles of ornamentation of articles of glassware except by cutting them, are there not?

A. Yes, sir.

It was agreed if plaintiff was entitled to recover, he was entitled to recover the sum of $18.$\frac{00}{100}$.

Plaintiff's counsel then produced and offered in evidence the summons in this action and the certiorari, in the following words:

54 The superior court of the city of New York.

BENNETT B. SCHNEIDER, PLAINTIFF,
against
WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York, defendant.
} Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated September 28th, 1882.

MASON W. TYLER,
Plaintiff's Attorney.

Post-office and office address, No. 167 Broadway, New York City, New York.

(Endorsement:) 8172. Superior court. Bennett B. Schneider vs. W. H. Robertson. M. W. Tyler, att'y for pl'ff. To the collector of customs. Rec'd Sept. 29, 1882. G. W. P.

55 The President of the United States of America, to the judges of the superior court of the city of New York, greeting:

We for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William H. Robertson, defendant, by Bennett B. Schneider, plaintiff, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 16th day of October, 1882, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 11th day of October, in the year one thousand eight hundred and eighty-two.

[L. S.] JOSEPH M. DEUEL, *Clerk.*

STEWARD L. WOODFORD,
United States Attorney, Attorney for Defendant.

(Endorsement:) 8172. U. S. circuit court. Bennett B. Schneider vs. William H. Robertson. Copy certiorari. Stewart L. Woodford, U. S. attorney, attorney for defendant.

56 The plaintiff then rested.

After the testimony had been closed, the defendant's counsel moved the court to direct a verdict for the defendant, upon the general ground that the facts proved do not make out a case for the plaintiff.

Which motion was thereupon denied by the court.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, then moved the court to direct a verdict for the defendant, upon the ground that the plaintiff has not shown that he protested within ten days after the decision of the collector.

Which motion was thereupon denied by the court.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, then moved the court to direct a verdict for the defendant, upon the ground that the plaintiff has not shown that he appealed to the Secretary from the decision of the collector within thirty days after the decision was rendered.

Which motion was thereupon denied by the court.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, then moved the court to direct a verdict for the defendant, upon the ground that the plaintiff has not shown that he brought suit within ninety days.

57 The court denied the motion, and defendant's counsel then and there duly excepted.

Counsel for the defendant then opened the case for the defendant, and to maintain the issues on his part called various witnesses, glass-cutters by trade, who testified substantially as stated in the charge, and that after the ends of the glass chimneys represented by the samples 3 and 4 had been subjected to the action of an iron wheel, with sand and water, and particles of the glass thus rubbed off, they were then articles of glass, cut.

The defendant then rested.

Counsel for the defendant then renewed his motion, made at the close of plaintiff's case, to direct a verdict for the defendant and upon the same grounds.

The court in each case denied the motion, and defendant's counsel, in each case, then and there duly excepted.

Defendant's counsel then moved the court to direct a verdict for the defendant upon the further and additional ground that plaintiff's protest was not sufficient; that the substance of the protest was not sufficient.

The court thereupon denied the motion, and defendant's counsel then and there duly excepted.

58 CHARGE.

Coxe, *J.*:

Gentlemen of the jury: The question to be presented to you in this case is a pure and simple question of fact. The facts are entirely within the province of the jury, and if the court entertained an opinion as to how this question should be determined upon the facts, it would not be seemly or proper to express it in your presence. I have noticed the care and attention which you have given to the evidence, and the questions that various members of the jury have asked of witnesses upon the stand indicate that you appreciate already precisely what the issue in the case is. I shall

therefore content myself with simply stating, as I understand it, the question which you are to determine, with a few rules which may aid you in your deliberations, and shall not attempt, after the elaborate discussion which this question has received, to recapitulate or discuss the evidence as it has been given from the witness-stand.

The plaintiff imported into this country articles of merchandise known as lamp chimneys, two samples of which, conceded to be fair samples of the whole invoice, have been presented before you. These articles were classified and assessed by the collector under Schedule B of the Revised Statues of the United States, and under that subdivision of the
59 statue which has been referred to here as section 947, which imposes an ad valorem duty of forty per cent. upon all articles of glass, cut, engraved, painted, and so on.

The importer, feeling himself aggrieved at this assessment, protested against the duties so charged against him, and insisted by his protest that the collector should have classified them under the next preceding section of the statute, referred to here as section 946, which imposes an ad valorem duty of thirty-five per cent. on all plain, mould, and pressed glass, not cut, engraved, or painted.

So, gentlemen, you will perceive that in this case, as in every case, the burden is upon the plaintiff to satisfy you by a fair preponderance of evidence of the allegations of his complaint. If the evidence upon the part of the plaintiff and upon the part of the defendant exactly balance, so that the scales stand even in your mind, your verdict should be for the defendant, because the plaintiff has not in that event satisfied you by the preponderance of evidence which the law requires.

So the question for you to determine is, are these articles which have been produced before you articles of plain, or mould, or pressed glass not cut?

If you find upon that issue that they are, the plaintiff is entitled to succeed. If, however, you find that they are not, the defendant is entitled to succeed.

60 It is contended upon the part of the plaintiff that if he succeeds in showing to your satisfaction that these articles are not cut glass, or glass cut, it follows as a necessary and absolute result from that finding that they must necessarily be classified under section 946. That contention may or may not be correct. I have not examined the statute to find whether there is any other section therein under which these articles might be classified. My impression is that that contention is correct.

But that is not, in my view, the proper way in which this present issue should be presented to you, for it does not entitle the plaintiff to a verdict to show that the collector is wrong, unless he follows up that evidence by the further proof that he, the plaintiff, is right. The collector may be wrong and still the plaintiff not entitled to recover; and the burden is upon the plaintiff to show that the section which he has pointed out in his protest is the one under which these articles should be assessed.

There is, as I understand it, no dispute whatever upon the proof as to the manner in which these chimneys are manufactured and made ready for the market. After they are taken from the mould in the shape described by the witnesses they are placed by unskilled laborers upon a horizontal revolving iron wheel upon which is sand and water, and held

there until the bottom of them is ground or cut down ready for the market. All the witness agree as to the process. Neither is there
61 any dispute, I think, that they are articles of plain or mould glass. So that the sole inquiry for you is, are they cut or uncut? If they are not cut, the plaintiff is entitled to recover.

Upon this proposition the theory of the plaintiff generally stated is that cut glass and glass cut are substantially the same thing; that cut glass is a well-known article of trade and commerce, well known among commercial men, and that when the legislature used the word glass cut they meant thereby to designate this particular article; that cut glass is a glass which has been subjected to the three processes described, and which has been ornamented and beautified by these processes, and that when it has been subjected to the three processes it becomes a well-known article of commerce.

Upon that proposition I shall say to you, gentlemen, upon all the evidence, that if you find that glass cut is the same as cut glass, and cut glass is well-known in the trade and commerce of the country, and that these are not cut-glass or glass cut, then the plaintiff is entitled to recover.

The plaintiff also has called a number of witnesses, most, if not all, of them engaged in importing glass into this country——

PLAINTIFF'S COUNSEL. One of them was a practical man.

62 THE COURT. Well, perhaps not all; but most of them whom, as I say, have been engaged in importing glass into the country, who have testified as to the process of cutting glass. They all maintain that no glass is cut until it has been first placed upon the iron wheel with sand and water, which they denominate grinding; next, upon a stone wheel with water alone, which they denominate cutting; and thirdly, upon a cork or wooden wheel with pumice stone, which they call polishing; and that when the glass has been ground, cut, and polished it becomes cut glass. That is the contention upon the part of the plaintiff. And those witnesses say that no glass is cut until it has been subjected to each and all of these processes.

Upon the part of the defendant a number of witnesses have been called, most of them, I think, engaged in manufacturing glass in this country, who differ entirely from the evidence offered upon the part of the plaintiff. They contend that glass is cut the moment it is subjected to any one of these processes, or the moment it has been subjected to the first of these processes; that is, that cutting glass is simply grinding its surface; and whether it is rough cut or polished, it is still the same thing—it is cut glass. Those witnesses denominate the first process—the process with the iron wheel and sand—as cutting; the second process, with stone and water, they denominate as polishing; and the third process, with wood and pumice stone, as finishing.

63 The defendant also contends that the section of the statute referred to by the plaintiff, which enumerates plain, mould, or pressed glass uncut, was intended to cover those articles which have been referred to, such as bottles and chemists' materials, and so on, whereon no cutting whatever has been placed, and that it was not the intention of Congress to classify under that section any article which had been subjected to cutting, no matter how infinitesimal the cutting might be.

I do not know, gentlemen, as I can present this question in any more

concise language than by stating to you the words of a learned judge of this circuit in a case involving almost precisely the identical question. In the case of Bawo against Arthur Judge Shipman says:

"The plaintiffs claimed upon the trial that glass articles which are cut are placed upon a series of vertical revolving wheels, each wheel being of finer grade than the preceding one, and are smoothly polished upon this series of wheels, and that cutting means polishing or smoothly finishing by friction applied to a series of wheels, and deny that roughing off is cutting according to the signification in which that word is used in the glass-cutter's art."

That is substantially the claim or contention of the plaintiff upon this trial.

64 "The defendant contended that cutting is any abrasion of the rough particles of glass by friction, and that roughing off or smoothing of the ragged edges is the first step in the cutting process, and that glass is cut when any attrition or friction is applied to the broken edges of the glass.

"The matter in controversy was a question of fact to be determined by the testimony of those experienced in the trade or art. It depended upon the meaning of the word 'cut,' and stated generally, was: Is glass cut only when it is polished or has gone through the several stages of a polishing process, or is it cut when the first and initial step has been taken in smoothing or grinding the edges of the glass?"

I adopt that language, gentlemen, in this case, and say to you that that is substantially the question here for you to determine upon this evidence; whether the plaintiff has satisfied you by a fair and reasonable preponderance of proof that the articles imported are articles of plain or mould glass uncut.

If you find for the defendant, your verdict will simply be for the defendant. If, however, you find a verdict for the plaintiff, you will find a verdict for the sum of eighteen dollars.

And I will say to the counsel upon both sides that I decline to charge the propositions handed up further than I have already charged,

65 and that an exception may be noted in each instance.

The defendant, by his counsel, then requested the court to charge the jury that the burden was upon the plaintiff to show that the imported chimneys were not cut, and if the jury found that the chimneys were cut, though merely for utility and not for ornament, then, as matter of law, the plaintiff was not entitled to recover, even though he shows that the phrase "cut glass" as used in commerce designates only ornamental cutting and does not include chimneys.

The court refused so to charge, except as already charged, to which ruling of the court the defendant, by his counsel, then and there duly excepted.

The defendant, by his counsel, then requested the court to charge the jury that the verdict should be for the defendant if the jury should find that the imported chimneys, represented by Exhibits 3 and 4, are cut, though merely for the sake of utility and not for ornament.

The court refused to so charge, except as already charged.

To which ruling of the court the defendant by his counsel then and there duly excepted.

Defendant's counsel then excepted to that part of the charge where the court left it to the jury to say whether commercially the phrase "glass cut" was the same as "cut glass."

66 To this the court replied as follows: I understood several of the witnesses that way; if I am wrong about the evidence, of course I shall not charge it so; I understood several of them to testify that in trade and commerce, so far as they knew, the words "glass cut" and "cut glass" were identical and meant to cover the same thing.

DEFENDANT'S COUNSEL. I do not think a witness said that there was a phrase "glass cut" so used in commerce.

After deliberation the jury returned a verdict for the plaintiff in the sum of eighteen dollars.

And forasmuch as the exceptions, matters, and things aforesaid would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions; and

It is ordered that the same be filed as part of the record, with like force and effect as if it had been reduced to writing, signed, and filed before the cause was given to the jury.

Witness my hand this 7th day of October, 1886.

ALFRED C. COXE.

67 (Indorsed:) 8172. U. S. circuit court, southern district of New York. Bennett B. Schneider vs. W. M. Robertson. Copy bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. U. S. circuit c't. Filed Oct. 7, 1886. Timothy Griffith, clerk.

68 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
vs.
BENNETT B. SCHNEIDER, DEF'T IN ERROR. } Assignment of errors.

Afterwards, to wit, on the third Monday of October term in the same term before the justices of the said court at the Capitol in Washington, come the said plaintiff in error by Stephen A. Walker, (his) attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has (have) lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Pl'ff in Error.

69 (Indorsed:) 8172. United States Supreme Court. William H. Robertson vs. Bennett B. Schneider. Assignment of error. Stephen A. Walker, attorney for pl'ff in error. Due service of a copy of

the within assignment of error is hereby admitted this 18th day of October, 1886. Tremain & Tyler, att'ys for def't in error. U. S. circuit c't; F'd Oct. 18, 1886. Timothy Griffith, clerk.

70 United States of America, ss:

To Bennett B. Schneider, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of October term, eighteen hundred and eighty-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Roertson, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated October 16th, 1886.

WM. J. WALLACE.

71 (Indorsed:) 8172. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Bennett B. Schneider, defendant in error, Citation. Stephen A. Walker, attorney for pl'ff in error.

Due service of a copy of the within citation is hereby admitted this 18 day of October, 1886.

TREMAIN & TYLER,
Attorneys for Def't in Error.

(Stamped:) U. S. circuit court, Oct. 18, 1886. Timothy Griffith, clerk.

72 Supreme Court of the United States.

WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York, plaintiff in error,
vs.
BENNETT B. SCHNEIDER, DEFENDANT IN ERROR.

Joinder in error. Docket No. 1256, Oct. term.

And afterwards, to wit, on the third Monday of October term, 1886, the said defendant in error, by Tremain & Tyler, his attorneys, comes into court and says that there is no error either in the record of proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

TREMAIN & TYLER,
Attorneys for Defendant in Error.

73 (Indorsed:) U. S. Supreme Court. Docket No. 1256. 1886, Oct. term, No. 1256. William H. Robertson, collector of the port of New York, pl'ff in error, vs. Bennett B. Schneider, deft. in error.

Joinder in error. Tremain & Tyler, att'ys for deft. in error, 167 Broadway, N. Y. City.

Service of a copy of the within joinder in error is hereby admitted this 23 day of October, 1886.

STEPHEN A. WALKER,
Attorney for Pl'ff in Error.

(Stamped:) Office Supreme Court U. S. Filed Nov. 26, 1886. James H. McKenney, clerk.

(Indorsement on cover:) No. 249. William H. Robertson, collector of the port of New York, plaintiff in error, vs. Bennett B. Schneider. S. New York C. C. U. S. Filed October 25, 1886.